

Order Sheet
IN THE HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD

C.P. No.S-281 of 2019

DATE

ORDER WITH SIGNATURE OF JUDGE

07.12.2023

Mr. Mushtaque Ali Tagar advocate for applicant/petitioner.

In view of the arguments articulated coupled with the content of the restoration application, the same is allowed and the petition is restored. Learned counsel is directed to address the Court on maintainability.

Briefly stated, Guardian & Wards Application No.15 of 2017 was filed before Family Judge & Judicial Magistrate Nawabshah and the same was disposed of vide judgment dated 28.08.2018. Guardian & Wards Appeal No.2 of 2018 was filed by the present petitioner and the same was dismissed vide judgment dated 06.03.2019 by the 2nd Additional District Judge Shaheed Benazirabad. The present petition assails the respective judgments.

Learned counsel was confronted with the maintainability hereof in view of Supreme Court's judgments in *Hamad Hasan*¹ and *Arif Fareed*², which disapproved of agitation of family matters in writ petition, however, the counsel remained unable to demonstrate the existence of any jurisdictional defect meriting recourse to writ jurisdiction. The crux of the argument was an assertion regarding remarriage of the opponent, however, the said issue was *admittedly* alien to the proceedings before the trial court, hence, not deliberated therein. The counsel candidly admitted that the said ground was not available thereto during the trial court proceedings as the event purportedly occurred thereafter. The appellate judgment had meticulously recognized this issue and observed that the petitioner was not precluded from preferring a fresh application upon such ground. However, instead of doing so the petitioner persists in agitating the matter in continuation of previous proceedings and requires that fresh inquiry / evidence be led / appreciated in writ jurisdiction.

Heard and perused. It is settled law that the ambit of a writ petition is not that of a forum of appeal, nor does it automatically become such a forum in instances where no further appeal is provided³, and is restricted *inter alia* to appreciate whether any manifest illegality is apparent from the order impugned. It is trite law⁴ that where the fora of subordinate jurisdiction had exercised its discretion in one way and that discretion had been judicially exercised on sound principles the supervisory forum would not interfere with that discretion, unless same was contrary to law or usage having the force of law. The impugned judgments appear to be well-reasoned and the learned counsel has been unable to demonstrate

¹ Per Ayesha A. Malik J in *M. Hamad Hassan v. Mst. Isma Bukhari & Others* reported as 2023 SCMR 1434.

² Per Amin ud Din Ahmed J in *Arif Fareed vs. Bibi Sara & Others* reported as 2023 SCMR 413.

³ Per Ijaz ul Ahsan J in *Gul Taiz Khan Marwat vs. Registrar Peshawar High Court* reported as PLD 2021 Supreme Court 391.

⁴ Per Faqir Muhammad Khokhar J. in *Naheed Nusrat Hashmi vs. Secretary Education (Elementary) Punjab* reported as PLD 2006 Supreme Court 1124; *Naseer Ahmed Siddiqui vs. Aftab Alam* reported as PLD 2013 Supreme Court 323.

any manifest infirmity therein or that it could not have been rested upon the rationale relied upon.

The Supreme Court has recently had occasion to revisit the issue of family matters being escalated in writ petitions, post exhaustion of the entire statutory remedial hierarchy, in *Hamad Hasan*⁵ and has deprecated such a tendency in no uncertain words. It has *inter alia* been illumined that in such matters the High Court does not ordinarily appraise, re-examine evidence or disturb findings of fact; cannot permit constitutional jurisdiction to be substituted for appellate / revisionary jurisdiction; ought not to lightly interfere with the conclusiveness ascribed to the final stage of proceedings in the statutory hierarchy as the same could be construed as defeating manifest legislative intent; and the Court may remain concerned primarily with any jurisdictional defect. Similar views were earlier expounded in *Arif Fareed*⁶.

In so far as the plea for *de novo* appreciation of evidence is concerned, it would suffice to observe that writ jurisdiction is not an amenable forum in such regard⁷.

It is the deliberated view of this Court that the present petition does not qualify on the anvil of *Hamad Hasan* and *Arif Fareed* and even otherwise no case is made out to interfere in respect of the findings on merit. Therefore, in *mutatis mutandis* application of the ratio illumined, coupled with the rationale delineated supra, this petition is found to be misconceived, hence, hereby dismissed along with listed application/s.

Judge

Ali Haider

⁵ *Per Ayesha A. Malik J in M. Hamad Hassan v. Mst. Isma Bukhari & Others* reported as 2023 SCMR 1434.

⁶ *Per Amin ud Din Ahmed J in Arif Fareed vs. Bibi Sara & Others* reported as 2023 SCMR 413.

⁷ 2016 CLC 1; 2015 PLC 45; 2015 CLD 257; 2011 SCMR 1990; 2001 SCMR 574; PLD 2001 Supreme Court 415.